IN THE

Supreme Court of the United States

DECEMBER TERM, 1946.

No. 476

ILLINOIS PACKING COMPANY, A CORPORATION, *Petitioner*,

vs.

CHARLES B. HENDERSON, INDIVIDUALLY,
AND AS ACTING ADMINISTRATOR OF THE
OFFICE OF FEDERAL LOAN ADMINISTRATOR, WASHINGTON, D. C.
AND RECONSTRUCTION FINANCE CORPORATION,
A CORPORATION, WASHINGTON, D. C., *Respondents*.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, ILLINOIS PACKING COMPANY, a corporation, petitions this Court for a rehearing of the denial of the petition for a writ of certiorari to review a judgment of the United States Emergency Court of Appeals, previously filed.

The Petitioner urges, in support of its petition, the following matters for the consideration of this court.

The issues presented, and the arguments advanced to sustain the position of the Petitioner, have been set forth in the petition for writ of certiorari. The point upon which these proceedings turns is whether the respondents, or any administrative agencies or instrumentalities of the United States, may establish arbitrary and conclusive presumptions of fact by regulation, and upon the basis of such conclusive presumptions deny persons affected by such regulations the right to a hearing and to a determination of the actual facts. As we stated in the petition for certiorari, the issue in this case is:

> "Whether any agency of the United States Government is authorized to establish by Regulation arbitrary presumptions of fact which may be contrary to actual facts is a matter of broad public importance. Arbitrary presumptions of facts have the faculty of depriving persons, as they have in this case, of their property without any fair hearing and in fact without any hearing. Whether this agency in this case has such broad authority or whether any agency of the United States Government has this authority is a matter of broad public import warranting the consideration of this court."

The Petitioner was a slaughterer of beef and other livestock during the period in question. It derived its sole income from the sale of the meat derived from the slaughter and did no processing of the by-products. It was subject to the regulations of the Office of Price Administration (MPR 169) and to the necessity of purchasing live cattle at prices competitive with all other packers and slaughterers of meat. By virtue of the competitive pricing level, the actual purchase price of live cattle was greater than the price at which it was allowed to sell the meat derived from the slaughter under the provisions of MPR 169.

It was therefore necessary that some relief be given to the Petitioner, and to all other non-processing slaughterers of beef, all of whom were faced with the same problem.

The necessity for a subsidy was recognized, and a subsidy was placed in effect by Directives of the Office of Economic Stabilization.

The Petitioner was, however, denied the right to receive subsidies under the regulations of Reconstruction Finance Corporation solely because the ownership of more than 10% of its outstanding stock by a processor or purveyor of meat was conclusively presumed to result in control of the Petitioner.

No hearing or administrative determination of fact was ever accorded to the Petitioner.

Respondents support the conclusive presumption of fact indulged in by the regulation on the ground that it would be difficult to determine whether control in fact existed, and that the administrative convenience and necessity justified the denial of a right to a hearing.

The Petitioner respectfully suggests that this controversy, which has been so briefly sketched, involves an issue of the utmost public importance.

This is not merely a question of private injury. The meat subsidy program involved the payment of several hundred millions of dollars. The Petitioner is not the only slaughterer adversely affected by the regulation. The regulation has operated to deprive many other slaughterers of the right to subsidies. More important, however, is the question of the inherent impropriety and illegality of the administrative device adopted by the Respondents.

In every instance in which this Court has had occasion to consider the problem, it has held that the use of conclusive presumptions is repugnant to constitutional guarantees.

The decision of the Emergency Court of Appeals is contrary to every decision of this Court. Not a single decision or authority is cited by the court below. The impropriety of its holding is further evidenced by the strong dissent.

The decision of the court below, if allowed to stand by virtue of the denial of the petition for writ of certiorari, cannot be dismissed as a ruling which is limited to the facts in this litigation. The decision is contrary to all law on the subject. Yet it stands as authority because of the court's prestige. This Court now has an opportunity to check encroachment on and usurpation of judicial power by administrative agencies which deny hearings on facts by the simple device of a conclusive presumption.

Petitioner prays that this Court will grant to it the right to a rehearing of its petition for writ of certiorari and upon said hearing allow to Petitioner the right to review the decision of the court below.

It is certified by counsel for Petitioner that this petition for rehearing is presented in good faith and not for purposes of delay.

Respectfully submitted,

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and
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December 7, 1946.